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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/594,198

09/25/2006

David L. Hauser

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01/08/2009

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EXAMINER

HORNBERGER, JENNIFER LEA

ART UNIT

PAPER NUMBER

3734

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/594,198	<b>Applicant(s)</b> HAUSER ET AL.	
	<b>Examiner</b> JENNIFER L. HORNBERGER	<b>Art Unit</b> 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 18, 19, 22, 23, 29-31, 33, 34, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Gelbfish (US 5,800,457).

Regarding claim 18, Gelbfish discloses an implantable vascular filter, comprising: an expandable filter body (10) having a substantially conical shape, the filter body configured to be seamed to an inner wall of a blood vessel; and an agitation member (56) movably coupled to the filter body; wherein the vascular filter is detachable from a delivery catheter for implantation in the blood vessel and wherein the agitation member is adapted to break apart particles captured within the filter body.

Regarding claim 19, Gelbfish discloses the agitation member is located substantially within an interior volume of the filter body (element 56, Fig. 3D).

Regarding claim 22, Gelbfish discloses an elongate drive mechanism configured for removable attachment to the agitation member wherein the agitation member is adapted to be powered by the elongate drive mechanism for causing the agitation member to rotate (col. 7, ln. 16-24).

Regarding claim 23, Gelbfish discloses a clutch mechanism (128) such that the agitation member moves relative to the filter body only when a particle is trapped within the filter body. The handle (128) provides a clutch mechanism in that agitation member is only moved when the user intends for movement, which would most likely be when a particle is trapped within the filter body.

Regarding claim 29, Gelbfish discloses the agitation member emits a pressurized fluid flow (col. 8, ln. 59 - col. 9, ln. 3).

Regarding claim 30, Gelbfish discloses an aspiration catheter (26) for aspirating particles (col. 7, ln. 35-40).

Regarding claim 31, Gelbfish discloses an implantable device configured to capture and macerate emboli within a blood vessel, comprising: an expandable filter body (10) having anchoring members (38) for engaging an inner wall of a blood vessel; an agitation member (56) located substantially within an interior volume of the filter body (Fig. 3D); and a drive mechanism for rotating the agitation member with respect to the filter body (col. 7, ln. 16-24); wherein the filter body is detachable from a delivery catheter (Fig. 3C) for fixation in the blood vessel and wherein the agitation member is configured to macerate emboli captured within the filter body.

Regarding claim 33, Gelbfish discloses the drive mechanism comprises an elongate drive catheter coupled to the agitation member (col. 7, ln. 16-24).

Regarding claim 34, Gelbfish discloses an aspiration catheter (26) configured for advancement along the elongate drive catheter (60).

Regarding claim 36, Gelbfish discloses a device configured to improve blood flow through a blood vessel, comprising: a filter body (10) disposed along the distal end portion of an outer catheter (18), the filter body configured to capture and hold embolic particles; an agitation member (56) disposed along the distal end portion of an inner catheter (60), the agitation member being rotatably coupled to the filter body; an aspiration catheter (26) sized for slidable advancement over the outer catheter, the aspiration catheter configured for drawing particles into the filter body; wherein the agitation member is advanceable relative to the filter body and wherein the filter body is

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configured to collapse into the aspiration catheter for removing the captured particles from the blood vessel (Fig. 3A-3D).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 20, 21, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gelbfish (US 5,800,457) in view of Demarais et al. (US 2002/0151906).

Regarding claims 20 and 32, Gelbfish fails to disclose a flow-receiving member coupled to the agitation member. Demarais et al. disclose a flow-receiving member coupled to the agitation member, wherein the flow receiving member is shaped to be powered by the flow of blood through the blood vessel for causing the agitation member to rotate relative to the filter body (paragraph 48). It would have been obvious to one of ordinary skill in the art to substitute the agitation member and its drive mechanism in the device of Gelbfish for the agitation member of Demarais et al. to achieve the same predictable result of breaking up particles by causing rotation of the agitation member. Substitution of one known element for another element providing the same function to yield predictable results would have been obvious to one of ordinary skill in the art at the time of the invention.

Regarding claim 21, Gelbfish in view of Demarais et al. disclose the agitation member is configured to reverse direction (paragraph 48).

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5. Claims 24, 26, 27 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gelbfish (US 5,800,457) in view of Poll et al. (US 2005/0059981).

Regarding claims 24 and 35, Gelbfish discloses the claimed invention except for comprising an implantable energy storage device coupled to the filter body for causing the agitation member to rotate. Poll et al. disclose an energy storage device (48) coupled to the agitation member (42) and indirectly coupled to the filter body for causing the agitation member to rotate (paragraph 47). It would have been obvious to substitute the agitation member and its driving mechanism in the device of Gelbfish with the agitation member and the energy storage device of Poll et al. to achieve the same predictable result of causing rotation of the agitation member. Substitution of one known element for another element providing the same function to yield predictable results would have been obvious to one of ordinary skill in the art at the time of the invention.

Regarding claim 26, Gelbfish in view of Poll et al. disclose the agitation member is configured to vibrate for breaking apart the particles (paragraph 47).

Regarding claim 27, Gelbfish in view of Poll et al. disclose the agitation member vibrates at ultrasonic frequencies (paragraph 47).

6. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gelbfish (US 5,800,457) and Poll et al. (US 2005/0059981) as applied to claim 24 above, and further in view of Bajaj (US 5,053,008).

Regarding claim 25, Gelbfish fails to disclose an electronic sensor for detecting the presence of particles within the filter body. Bajaj discloses a vascular filter having sensors (54 and 56) for detecting the presence of particles within the filter body (18) (col. 9, ln. 11-16). It would have been obvious to one of ordinary skill in the art to provide electric sensors in the device of Gelbfish in view of Bajaj in order to provide a means of alerting the physician of a clot or triggering the maceration of the clot.

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7. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gelbfish (US 5,800,457) and Poll et al. (US 2005/0059981) as applied to claim 27 above, and further in view of Willard et al. (US 5,419,774).

Regarding claim 28, Gelbfish in view of Poll et al. fail to disclose a battery coupled to the filter body for supplying power to the agitation member. Willard et al. disclose providing a battery for supplying power to an agitation member (col. 6, ln. 53-54). It would have been obvious to one of ordinary skill in the art to provide a battery in the device of Gelbfish as modified by Poll et al. to provide a compact energy source and to allow the device to be portable.

#### ***Response to Arguments***

8. Applicant's arguments with respect to claim 18, 31, and 36 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER L. HORNBERGER whose telephone number is (571)270-3642. The examiner can normally be reached on Monday through Friday from 8am-5pm, Eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571)272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jlh  
12/29/08

/Todd E Manahan/  
Supervisory Patent Examiner, Art Unit 3731